

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CIV. 4412

-----X  
MARGARET MARCUCCI,  
on behalf of herself and all others similarly situated,

JUDGE SULLIVAN

CLASS ACTION COMPLAINT

Plaintiff,

-against-

HOUSTON FUNDING II LTD

Defendant  
-----X

Plaintiff, by and through her undersigned attorney, alleges upon knowledge as to herself and her own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

### PARTIES

4. Plaintiff Margaret Marcucci (hereinafter "Marcucci") is a resident of the State of New York, New York County. On or about May 11, 2007, plaintiff received a debt collection notice from defendant Houston Funding II, Ltd.

5. Defendant Houston Funding II, Ltd. is a Texas Limited Partnership active in New York County and is engaged in the business of collecting debts with its principal place of business located in Houston, Texas. Defendant regularly attempts to collect debts alleged to be due another.

### 6. CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of herself and all consumers who have received debt collection notices and/or letters from the defendant which are in violation of the FDCPA, as of the date of plaintiff's complaint, and their successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are employees, associates or partners of defendant.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e(4), 1692e(5) 1692e(10) and 1692f(6).

b. Whether plaintiff and the Class have been injured by the defendant's conduct;

c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and have retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

#### STATEMENT OF FACTS

15. On or about May 8, 2007 defendant sent an initial collection letter to plaintiff, demanding payment of a debt allegedly owed to Household. A copy of said letter is annexed hereto as **Exhibit A**.

16. The collection letter stated that “[W]e are turning your account over to our asset investigation division . The investigator assigned to your account will investigate the following items:

1. Your source of income
2. Verified employment
3. Property ownership
4. Automobile ownership
5. Personal assets.”

17. The letter violates 15 U.S.C. § 1692e, 1692e(4), 1692e(5), 1692e(10) and 1692f(6) by implying that nonpayment will result in seizure, garnishment attachment or sale of any property or wages of any person.

18. As a result of defendant’s abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

FIRST CAUSE OF ACTION  
(Violations of the FDCPA)

19. Each of the above allegations is incorporated herein.

20. Defendant’s debt collection letter violated and overshadowed various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(4)), 1692e(5), 1692e(10) and 1692f(6), by employing false, deceptive and misleading representations in connection with the collection of a debt by implying that the debt collector will seize personal property assets.

21. As a result of defendant's violation of the FDCPA, plaintiff has been damaged and is entitled to statutory damages, costs and attorney's fees.

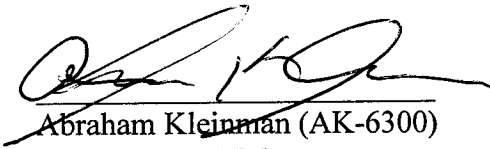
**WHEREFORE**, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Issue a declaratory Order requiring defendant to make corrective disclosures;
- c) Awarding plaintiff statutory damages;
- d) Awarding class members the maximum statutory damages;
- e) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- f) Awarding plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: May 8, 2008  
Uniondale, New York

  
Abraham Kleinman (AK-6300)  
KLEINMAN LLC  
626 RexCorp Plaza  
Uniondale, New York 11556-0626  
Telephone (516) 522-2621  
Facsimile (888) 522-1692



Department 951  
PO BOX 4115  
CONCORD CA 94524



MARGARET MARCUCCI  
110 E END AVE APT 2A  
NEW YORK NY 10028-7420

## Houston Funding II LTD

2620 Fountainview #305, Houston TX 77057  
1-800-782-0388 or Fax 1-713-978-5037  
(CST) 8:00 a.m. - 8:00 p.m. Mon. & Tues.  
8:00 a.m. - 5:00 p.m. Wed. - Fri.  
[www.houstontfunding.com](http://www.houstontfunding.com)

Date: May 8, 2007  
Account #: 0000007584332766  
Balance Due: \$1,664.44  
Original Creditor:  
HOUSEHOLD RETAIL SERVICES  
Retailer:  
SAKS

**PROTECT YOUR CREDIT RATING  
REMIT PAYMENT TODAY**

Dear MARGARET MARCUCCI,

Since you have failed to cooperate with us in resolving your account, account number 0000007584332766 in the name of MARGARET MARCUCCI will be reported to the major credit bureaus as a collection account further damaging your credit file.

We are turning your account over to our asset investigation division. The investigator assigned to your account will investigate the following items:

1. Your source of income
2. Verified employment
3. Property ownership
4. Automobile ownership
5. Personal assets

**ACT NOW AND CONTACT US TO STOP THE ACTIONS BEING TAKEN AGAINST YOU.** Working together we can help you clear this account and update your credit file. Please call 1-800-782-0388 to take advantage of our many payment arrangements.

Sincerely,

Fran Lucio  
Account Specialist  
347892

This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose.

*Saks Fifth Avenue  
Credit Card*